cost of taking some of the cattle to another place, and the loss of cattle from starvation and shrinkage for want of hay (STEELE, C.J., and GABBERT, J., dissenting). *Richner* v. *Plateau Live Stock Co.* (1908), — Col. —, 98 Pac. 178.

It is the general rule, as laid down by this decision, that where like property cannot be obtained in the open market, and the seller knows that the buyer made the purchase for a specific purpose, the seller is liable for any special damages to the buyer, in the absence of fraud, these being the natural consequences of non-delivery and presumably contemplated by the parties. *Hammer* v. *Schoenfelder,* 47 Wis. 455; *Border City, I. & Co.* v. *Adams,* 69 Ark. 219. This sounds something like the rule laid down in the familiar case of *Hadley* v. *Baxendale,* yet as pointed out in BENJAMIN, SALES, § 1308, in referring to that case "it is not universally true that the mere communication of the special circumstances of the case made by one party to the other would impose on the latter an obligation to indemnify the former for all the damages that would ordinarily follow from the breach." In the principal case evidence as to all the items of damages was put in by plaintiff over defendant's objection, yet it seems like a situation in which the limitation mentioned in Benjamin should apply. Certainly the shrinkage of the herd from lack of food seems rather a matter of conjecture. Still evidence on this point was introduced on the theory that it is enough if from approximate estimates of witnesses a specific conclusion can be reached, the exact amount need not be shown with absolute certainty. *Satchwell* v. *Williams,* 40 Conn. 371; *Hubbard Specialty Mfg. Co.* v. *Minn. Wood Designing Co.,* 47 Minn. 393; *Barngrover* v. *Maack,* 46 Mo. App. 407. Under this rule evidence upon almost any item of damage might be introduced, admitting the testimony of experts upon matters which to most minds would seem entirely conjectural, as in the principal case, the shrinkage of the herd.

SALES—PERFORMANCE OF CONTRACT—WAIVER OF DEFAULT.—Plaintiff contracted with defendant to furnish the hardware to be used in the erection of a public building by defendant. A certain percentage was to be paid on the goods as the work progressed, and the remainder within thirty days after completion of work. The sum of $25 per day was agreed upon as liquidated damages for delay. The third payment was made after the expiration of the thirty-day limit, but all the payments did not amount to the 85% agreed upon. *Held,* that the payments did not, as a matter of law, constitute a waiver of damages for delay (MCLAUGHLIN, J., dissenting). *Reading Hardware Co.* v. *Peirce* (1908), 113 N. Y. Supp. 331.

There can be no doubt about the soundness of the general rule as laid down in the prevailing opinion in this case. The rule is this: that payments made upon a contract and acceptance of the work do not prevent a party from setting up a counterclaim for failure to perform within the time specified in an action to recover the balance of the contract price. But under the facts in the principal case defendant's counterclaim would amount to more than what was still due on the contract, and thus the dissenting opinion holds to the view that the liquidated damages cannot be recovered;

only the actual damages caused by neglect in prosecuting the work. This would add to the general rule as stated above, a clause stating that payments which have been already made, with full knowledge of the facts, cannot be reclaimed. The reason given for this is that a claim for liquidated damages cannot be apportioned. *Wills* v. *Webster,* 1 App. Div. 301. Thus plaintiff would be liable only for the actual damage caused by his delay. This seems the more equitable doctrine. It is a general rule that a party cannot recover money voluntarily paid with a full knowledge of all the facts, although no obligation to make such payment existed. *Abell* v. *Douglass,* 4 Denio 305; *Wyman* v. *Farnsworth,* 3 Barb. 369. Money voluntarily paid under no mistake of fact and without fraud or imposition on the payor cannot be recovered back, though it was not legally due. *Hollingsworth* v. *Stone,* 90 Ind. 244. According to these authorities, defendant could not recover under his counterclaim sums which he had already paid, which were made voluntarily and under no mistake of fact. Under the decision in the principal case it must be tried again to determine the question of due performance, and, if there was any delay, who caused it. Then if defendant counterclaims for his actual damages rather than the liquidated amount the dissenting judge will also be satisfied.

TAXATION—TAX DEEDS—RECITALS.—A tax deed recited a sale to the county for the taxes of 1892 and an assignment of the certificate. The consideration was stated as "taxes, costs and interest due on said land for the years 1892, 1893, 1894, 1895 and 1896, to the treasurer paid as aforesaid." To the recital of the amount paid for the assignment of the certificate, however, was added, "being the taxes, charges and interest due on said land for the years A. D. 1891, 1893, 1894, 1895." *Held,* that the tax deed was defective on its face and should be set aside. *Price et al.* v. *Barnhill* (1908), — Kan. —, 98 Pac. 774.

This decision is in accord with the general rule as to tax deeds. BLACK, TAX TITLES, § 409, says: "A tax title is a purely technical as distinguished from a meritorious title, and depends for its validity on a strict compliance with the statutes, and a court of equity will not interfere to correct an error of the officers in making out a deed of land sold by them for taxes." *Altes* v. *Hinckler,* 36 Ill. 265; *Keepfer* v. *Force,* 86 Ind. 81; *Bowen* v. *Andrews,* 52 Miss. 596. Contra: *Hickman* v. *Kempner,* 35 Ark. 505, holding that it is not a substantial objection to the clerk's deed that it falsely recites that the land was assessed in the name of unknown owners. The recital of the grantee's place of residence in a tax deed is not conclusive. *Billings* v. *Kankakee Coal Co.,* 67 Ill. 489. The deed must show that the land was sold for the taxes of a particular year, and an ambiguity in this respect cannot be explained by parol testimony. *Maxcy* v. *Clabaugh,* 6 Ill. 26. A deed is void when it appears that the property was not forfeited on the date nor for the taxes stated. *Waddill* v. *Walton,* 42 La. Ann. 763. Recitals in a tax deed are on general principles of law conclusive as to the facts recited. *Reckitt* v. *Knight,* 92 N. W. 1077. A tax deed cannot be upheld if a fact showing that it was improperly issued is stated in recitals which are wholly voluntary and unnecessary. *Douglass* v. *Lowell,* 60 Kan. 239, 56 Pac. 13.